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**By Email & Overnight Courier**

Mary L. Cottrell, Secretary  
Department of Telecommunications and Energy  
Commonwealth of Massachusetts  
One South Station  
Boston, MA 02110

Re: ***D.T.E. 01-20***

Dear Ms. Cottrell:

WorldCom, Inc. ("WorldCom") hereby responds to the comments filed yesterday by Verizon regarding its request for an extension of time to submit its compliance filing. Specifically, WorldCom opposes Verizon's suggestion "to retroactively true up back to August 5, 2002, the new rates that Verizon will file on September 9, 2002." Verizon Comments at 1-2. As explained in WorldCom's comments and cross-motion filed yesterday, the Department should instead order Verizon to tariff interim UNE switching, port, transport and loop rates comparable to the rates currently in effect in New York.

The Department stated in its July 11, 2002 Order (the "*Order*") that its "objective . . . is to set UNE rates that most accurately reflect the TELRIC costs of particular UNEs." *Order* at 20. Although the *Order* does not prescribe specific UNE rates, it does set many of the inputs to be used in re-running the Verizon cost models that will be used to set permanent UNE rates. And critically, those inputs provided the Department with enough guidance as to what the anticipated UNE rates would be to permit Chairman Vasington to state publicly that the Department expects UNE rates for loops and switching to be near the current rates in New York. In other words, even without precisely identified rates, the *Order* makes clear that the rates Verizon currently charges do not "accurately reflect the TELRIC costs" of UNEs. Allowing Verizon to continue to charge UNE rates that are so far above what the Department now considers to be TELRIC-compliant rates is inconsistent with both the Telecommunications Act of 1996 and the Department's mandate under state law. Indeed, in D.T.E. 02-26, the Department stated that the current rates were "TELRIC-compliant" but acknowledged that its



current review of those rates “does not change their status and cannot *until a superseding order of the Department issues.*” D.T.E. 02-26 *Letter Order* (May 9, 2002) at 4 (emphasis added). With the July 11, 2002 *Order*, a “superseding order” now *has* issued, rendering Verizon’s current rates no longer TELRIC compliant. In that same *Letter Order* in D.T.E. 02-26, the Department further stated that “[a]llowing a rate to take effect is an implicit statement that the rate is just and reasonable under [M.G.L. c. 159] § 14, and is, in the instant case, TELRIC-compliant under the 1996 Telecommunications Act. We are not prepared to make that judgment about Verizon’s April 10 proposal.” *Id.* at 5. It is equally true that allowing a rate to *remain* in effect is an implicit statement that the rate is both “just and reasonable” under state law and TELRIC-compliant under the 1996 Act. The switching and transport rates Verizon proposed on April 10, 2002 are the same rates that Verizon proposed in this case, and they are the same rates the Department has reduced by virtue of the input changes directed by the *Order*. Thus, the Department now has made a judgment concerning Verizon’s April 10 proposal and has found that those rates (which are themselves lower than the current rates) are too high. Similarly, the loop rates to be implemented pursuant to the *Order* will be based on inputs that will make loop costs lower than the costs calculated in the Department’s *Consolidated Arbitrations* docket (*e.g.*, higher fill factors, copper/fiber mix in the outside plant, lower cost of capital). Verizon’s current rates are neither “just and reasonable” under state law nor TELRIC compliant under the Telecommunications Act. They should not be allowed to remain in effect.

Nor is it sufficient to rely on a true up that would reimburse CLECs for their overpayments to Verizon. First, after-the-fact true ups would not alter the fact that CLECs would still be paying for UNEs at rates that have been determined to be out of compliance with TELRIC. Second, forcing CLECs to continue to pay Verizon’s overpriced UNE rates – even if they are later subject to true up – amounts to the CLEC community providing Verizon with interest free loans. And although the New York rates would also be subject to true up, they are clearly more in line with TELRIC than Verizon’s current rates. While reimbursement checks may be written under either scenario, the amounts to be paid out following adoption of the New York rates will undoubtedly be less than the amounts that Verizon will have overcharged were the current rates to remain in place.

Finally, Verizon’s proposal is *not* consistent with the *Order*. The true up contemplated by the Department rectifies discrepancies between the compliance tariff rates scheduled to be filed on August 5 and the final rates ordered “after the Department reviews the compliance filing.” *Order* at 519. Verizon has proposed a true up between its *current* rates and the rates it proposes in its compliance tariff *before* those rates are further adjusted by the Department. To comply with the *Order*, the rates Verizon charges between August 5 and September 9, 2002 would need to be trued up yet again to the rates the Department sets after reviewing Verizon’s compliance tariff. (Given Verizon’s historical penchant for viewing compliance filings as revenue enhancement vehicles, it is not surprising that Verizon failed to include such a provision in its true up offer.) In stark contrast to Verizon’s proposal, WorldCom’s cross-motion to adopt the New York rates on an interim basis accomplishes precisely what the Department ordered – it allows rates that are lower and nearer to TELRIC levels to go into effect immediately, and it adjusts any discrepancies by having the interim rates trued up against



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the final rates established by the Department, following review of Verizon's compliance tariff and all motions for reconsideration.

The inputs directed by the Department make clear that many of the key UNE rates to be generated pursuant to the Department's *Order* will be lower than the rates that Verizon has proposed in this litigation, and lower than the rates currently in effect. As such, federal law, state law and fundamental fairness all dictate that Verizon not be permitted to continue to overcharge CLECs for UNEs. Verizon's proposal to leave its current rates in place and retroactively true up its rates upon the submission of its compliance filing should be rejected. WorldCom's cross motion to adopt the current New York rates on an interim basis, subject to true up upon a final determination of permanent UNE rates in Massachusetts, should be granted.

Very truly yours,

Christopher J. McDonald

cc ( <i>overnight courier</i> ):	Marcella Hickey, Esq., Hearing Officer
	Tina Chin, Esq., Hearing Officer
	Bruce P. Beausejour, Esq.
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